IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION: 15.11.2007

Santokh Singh

...Petitioner

versus

State of Punjab

... Respondent

CORAM:- Hon'ble Mr. Justice Uma Nath Singh.

Present: Mr.Abhishek Sethi, Advocate
for the petitioner.
Ms.Gurveen H.Singh, Addl.AG, Punjab.

UMA NATH SINGH, J.

This criminal revision arises out of a judgment dated 11.1.1992 passed by learned Additional Sessions Judge, Amritsar, in Criminal Appeal No.36 of 1990, affirming the judgment and order passed by learned Judicial Magistrate Ist Class, Amritsar, convicting the accused-petitioner under Section 9(a) of the Opium Act, 1878 (for short `the Act'), and sentencing him to undergo RI for one year and six months with a fine of Rs.500/-, in default of payment of fine, directing to further undergo RI for one month.

It appears that ASI Gurdip Singh (PW1) along with ASI Jasbir Singh (PW2) with other police officials were holding blockades on Beas Barrier on the GT Road on 1.12.1984, in order to check the buses and trucks. During the course of checking, a bus came from Jalandhar and all the passengers were directed to alight. The moment the petitioner alighted

from the bus, he caused suspicions in the mind of the police, as immediately after alighting, he started moving towards Beas and, therefore, he was apprehended on suspicion. On a personal search of the petitioner, contraband item (being opium) wrapped in a glazed paper was recovered from a jhola (bag), which he was hanging on his left shoulder. Out of the total quantity of contraband, a sample of 10 gms. was taken and the remaining bulk quantity of opium was weighed to be 3.990 kgs. The sample and the bulk of contraband were sealed separately with the seal impression of ASI Jasbir Singh as `JS' and they were taken in possession vide the memo Ex.PA. A ruqa (Ex.PB) in respect thereof was sent to the Police Station, whereupon a formal FIR (Ex.PB/1) was recorded. Site plan (Ex.PC) was also drawn. That apart, from the personal search of the petitioner, currency notes of Rs.4,410/- and a wrist watch were recovered. After completion of investigation, a challan was laid under Section 173 Cr.P.C. The petitioner was supplied all the necessary documents towards compliance of Section 201 Cr.P.C. and ultimately, a charge under Section 9 (a) of the Act was framed against him. The petitioner pleaded not guilty and claimed trial.

The prosecution examined two ASI members of police party, being ASI Gurdip Singh (PW1) and ASI Jasbir Singh (PW2). That apart, the evidence of Chemical Examiner being Ex.PD and of other formal witnesses tendered on affidavits as Ex.PE and Ex.PF were also produced in the Court. In his statement under Section 313 Cr.P.C., the petitioner denied the charge and pleaded innocence. In his defence, he examined Constable Badri Nath (DW1) and closed the evidence. However, the trial Court as also the first Appellate Court found the prosecution evidence as aforesaid

reliable, credible and cogent for recording the order of the conviction and sentence.

Heard learned counsel for the parties and perused the records.

Learned counsel for the petitioner submitted that the police did not follow the necessary procedure in effecting seizure and even the occurrence of incident is doubtful so also the presence of the petitioner on place of recovery. Learned counsel also submitted that though the bus was overcrowded but no independent witness, not even the driver or the conductor of the bus, was called to witness box and even their names were not mentioned in the panchnama. The case property, which was produced in the Court, did not bear the seal of the Investigating Officer or any such mark to identify that the property related to the offence in question. This is also a submission of learned counsel that the defence witness, Constable Bardi Nath (DW1), produced in the Court, has admitted that as per Police Regulations, descriptions or the details of the property were not entered in register Nos.19 and 21. This is also a submission that the link evidence on affidavits of formal witnesses (Ex.PE and Ex.PF) were not proved under Section 297 Cr.P.C. This is a further submission of learned counsel for the petitioner that this being a case of 1984, the petitioner has suffered rigour of criminal prosecution for about 23 years. He is a first offender but he was not even granted the benefits of release on probation under the Probation of Offenders Act, 1958.

On the other hand, learned Additional Advocate General appearing on behalf of the Punjab State submitted that the trial Court in para 8 of its judgment has discussed in detail that the Investigating Officer was not put any suggestion in cross-examinations about the missing seal marks

in order to destabilise the prosecution case by saying that the property did not relate to recovery in question. This is also her submission that the recovery was effected way back in 1984, whereas the property was produced in the Court in 1987 and disappearance of seal can be explained by saying that it would have broken during that process, either in malkhana or in transit. She also referred to the evidence of DW1, which does not seem to disclose that the defence witness has stated that the necessary entry was manipulated but he has simply stated that such entries are made only in roznamcha and not in Register Nos. 19 and 21.

Hon'ble the Apex Court in a judgment reported in 2004(7) SCC 659 (State of Maharashtra versus Jagmohan Singh Kuldip Singh Anand and others), has held that revisional power of the High Court under Sections 397 and 401 cannot be exercised as a second appellate power. In exercise of revisional power, the High Court cannot undertake in depth and minute re-examination of entire evidence and upset concurrent findings of trial court and first appellate court. In para 22 of the judgment, the Hon'ble Court has held as under:

> "22. The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 Cr.P.C. Section 401 Cr.P.C. is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 Cr.P.C. confers power on the High Court or Sessions Court, as the case may be,

> "for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court."
>
> It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 Cr.P.C. conferring powers of an appellate Court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 Cr.P.C., read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power."

In this background, this Court is to exercise the revisional powers only for the purpose as enunciated in the judgment. It appears that the contraband item being opium which was wrapped in a glazed paper was recovered from a jhola (bag), which the accused was hanging on his left shoulder. The total quantity of opium was 4.00 kg, a huge quantity of contraband. The sample and the bulk of the contraband were seized and sealed with the seal impression of ASI Jasbir Singh as `JS' and the same were taken into possession vide the memo (Ex.PA). A ruqa (Ex.PB) was sent, whereupon a formal FIR (Ex.PB/1) was recorded and the site plan (Ex.PC) was drawn. On personal search of the accused, currency notes of Rs.4,410/- and a wrist watch were also recovered. The prosecution witnesses, namely, ASI Gurdip Singh (PW1) and ASI Jasbir Singh (PW2), being the members of the police party, have fully supported the prosecution case. Evidence of Chemical Examiner and other formal witnesses, being on affidavits (Ex.PD, Ex.PE and Ex.PF), also support the prosecution case. As

regards the examination of only the members of police party as witnesses and non-examination of any independent witness, including the driver and conductor of the bus, the accused has not alleged any animus to the police for false implication and moreover, the quantity being a huge one, i.e., 4 kg of opium, could not have been planted by the police. That apart, from personal search, a substantial amount of Rs.4,410/- and a wrist watch were also recovered from the accused. Looking to the quantity of contraband and the amount of money recovered from the possession of the accused, though he was travelling in a bus like an ordinary passenger, the credibility of seizure does not become doubtful. The recovery was effected way back in 1984 and the property was produced in the Court in 1987, therefore, if the seal impression of the case property was damaged and lost in the process of transit, for that reason alone, the prosecution case cannot be discarded. Further, necessary entries in respect of seizures were also made in the roznamcha as stated by DW1. As regards granting benefits of release on probation under the Probation of Offenders Act, 1958, in a case where the accused was found to be carrying a huge quantity of 4 kg opium, I am not inclined to accept the prayer as this is not a case which qualifies for taking a lenient view.

Thus, I do not find any infirmity as regards the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of the proceedings conducted before the Courts below. Therefore, this Crl. Revision No.66 of 1992, being devoid of merits, is, hereby, dismissed.

As the petitioner is reported to be on bail, he shall surrender to his bail bond to undergo the remaining part of the jail sentence. Learned

Chief Judicial Magistrate, Amritsar, shall take necessary steps to take him in custody towards compliance of this order.

15.11.2007 (UMA NATH SINGH)
pk JUDGE